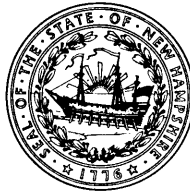


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JUN 5 1987

May 27, 1987

Mr. Michael Spector, Chairman
Board of Accountancy
2 1/2 Beacon Street
Concord, New Hampshire 03301

RE: Residency Requirement

Dear Mr. Spector:

Pursuant to our conversation of April 20, 1987, this office has undertaken a review of the residency and business requirements of RSA 309-A:3, I in light of the 1985 U.S. Supreme Court's decision in Supreme Court of New Hampshire v. Piper, 470 U.S. 274, 84 L. Ed. 2d 205. This letter sets forth our analysis of Piper and our conclusion that the Board of Accountancy should not disqualify any person who otherwise meets the criteria established in RSA 309-A:3 from obtaining the certificate of a certified public accountant solely for failure to reside, work, or maintain a place of business in New Hampshire.

RSA 309-A:3, I provides that certification as a public accountant shall be given only to a person who is "a resident of this state or has a place of business therein or as an employee is regularly employed therein." The Piper decision struck down a New Hampshire Supreme Court Rule which established a residency restriction for admittance to the Bar, on the basis of the Privileges and Immunities Clause, Art IV §2 of the U.S. Constitution. Although Piper addressed this residence restriction with reference solely to the legal profession, the Court's analysis is equally applicable to other professions, including accounting. Cf. Silver v. Garcia, 760 F. 2d 33 (1st Cir. 1985) (striking down one-year residence prerequisite for obtaining insurance consultant's license).



Mr. Michael Spector, Chairman
May 27, 1987
Page 2

Piper was based on three major considerations. First, the legal profession was held to be encompassed by the Privileges and Immunities Clause because it is an occupation which is national in scope and "important to the national economy." 84 L. Ed. 2d at 211. Secondly, no substantial reason was put forth as to why the New Hampshire Supreme Court should discriminate against out-of-state residents who wish to practice law in New Hampshire. Id. at 213-215. Finally, this discrimination bore no substantial relationship to the State's objectives of ensuring competence and integrity in the legal profession.

RSA 309-A:3 restricts certification to those accountants who reside in New Hampshire or who regularly conduct business in this State. Under this provision, accountants from outside the State who practice only occasionally in New Hampshire could be denied a certification. It seems probable that any arguments which the Board could make to defend this restriction would be weaker than those made in the Piper case.

The accounting profession clearly falls under the aegis of the Privileges and Immunities Clause since it is an occupation "important to the national economy." As you know, accountants who work for the eight major accounting firms often travel throughout the fifty states. This imputes a more national character to accounting than to the legal profession, since even the largest law firms tend to be more localized.

There seems to be no substantial reason for this discrimination. It was argued in Piper that lawyers, as officers of the court, are somehow connected to the operations of the government and thus susceptible to tight state control. The Court rejected this as a reason for state control; since the accounting profession is purely private and in no way connected to a branch of government, it is far less likely that the Court would favor tight intra-state controls here.

Finally, the interest of the State in maintaining these restrictions does not seem to bear a substantial relationship to the discrimination. Piper determined that interests of competency and integrity could be satisfied by the less burdensome means of educational requirements, ethical rules and a strenuous exam prior to admittance. All of these safeguards are present in the accounting profession under the relevant rules and statutes.

It is therefore our opinion that the exclusion of persons from the practice of accountancy in New Hampshire solely because they live or work outside this State, is impermissible under Piper. Accordingly, we recommend that the Board refrain

Mr. Michael Spector, Chairman
May 27, 1987
Page 3

from enforcement of the residency and employment provisions of
RSA 309-A:3,I.

If we may be of further assistance in this matter, please
do not hesitate to contact us.

Very truly yours,

A handwritten signature in cursive script, reading "Emily Gray Rice".

Emily Gray Rice
Assistant Attorney General
Civil Bureau

EGR/pad
O-86-054